Louisiana-Pacific Corporation *and* Lumber, Production and Industrial Workers, Local Union 3074, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 20-CA-15109

June 22, 1981

DECISION AND ORDER

On February 9, 1981, Administrative Law Judge Gerald A. Wacknov issued the attached Decision dismissing this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief in opposition to the exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

[1] We find, in agreement with the Administrative Law Judge, that the Respondent was not obligated to bargain about the undecking of logs from its log deck at its Greenville mill, and placing them in piles preparatory to their being loaded by the subcontractor's employees. In making such finding, we note in particular that such subcontracting was consistent with the Respondent's past practices of hiring subcontractors to load and transport logs from its Greenville mill to its other mills on an average of four occasions each year, since 1974; that whenever such subcontracting occurred the Respondent's employees did not undeck the logs and deposit them in a place accessible to the subcontractor's employees for subsequent loading, other than occasionally; that there was no pattern or history of using a composite crew during such subcontracting operations; that such subcontracting was economically justified since the Respondent then contemplated permanently terminating its Greenville mill and transferring its logs; that at the time it subcontracted the work in question, the Respondent anticipated that the unit work of operating the front-end loader (CAT 966) would be needed primarily for cleanup operations several hours a day, a few days a week; that it would not have been economically feasible to hire a unit employee to operate the front-end loader for the sporadic work of undecking certain logs which received priority in loading after the subcontracting; and that employees Heard and McKinney were not qualified to *load* logs. Moreover, the relevant bargaining history shows that the Union in the past had unsuccessfully sought contract language limiting the established subcontracting practice. *Westinghouse Electric Corporation (Mansfield Plant)*, 150 NLRB 1574 (1965).

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge: Pursuant to notice, a hearing with respect to this matter was held before me in Quincy, California, on September 9, 1980. The charge was filed on January 3, 1980, by Lumber, Production and Industrial Workers, Local Union 3074, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (herein called the Union). On March 31, 1980, the Regional Director for Region 20 of the National Labor Relations Board (herein called the Board) issued a complaint and notice of hearing alleging a violation by Louisiana-Pacific Corporation (herein called Respondent) of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (herein called the Act). Respondent's answer to the complaint, duly filed, denies the commission of any unfair labor practices.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel and Respondent.

Upon the entire record and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Delaware corporation with facilities located in California, including a facility located in Greenville, California, where it has been engaged in the operation of a lumber mill. In the course and conduct of its business operations, Respondent annually ships goods and materials valued in excess of $50,000 directly to customers located outside the State of California. It is admitted, and I find, that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

The principal issue raised by the pleadings is whether Respondent unilaterally subcontracted bargaining unit work in violation of Section 8(a)(5) of the Act.

B. *The Facts*

Respondent has operated a lumber mill in Greenville, California, since in or about 1974, and has maintained a continuing collective-bargaining relationship with the Union.

On or about August 2, 1979, Respondent notified the Union, in writing, that Respondent anticipated permanently closing the Greenville mill, which produced two-by-four studs, on or about September 1, 1979, and offered to discuss this matter with the Union. Thereafter, representatives of Respondent and the Union met on several occasions to discuss the mill closure. During the course of one such meeting in September 1979, the Union's representative, Gerald Dunkley, asked what Re-

spondent intended to do with the "log deck"[1] which contained logs totaling some 7,300,000 board feet of lumber. Respondent's safety and industrial relations manager, John Marty, replied that he did not know what would be done with the logs upon the cessation of production operations.

Later, in mid-October 1979, it was determined by officials at Respondent's division headquarters that the smaller logs which were located in the Greenville log deck, and which normally would have been processed at the Greenville mill, were to be transferred to another of Respondent's sawmills in Oroville, California; and that the larger logs would be transferred, as they had been in the past, to Respondent's mill in Crescent Mills, California. However, Respondent did not advise the Union of this determination.

Thereafter, Respondent's log deck employees Robert Heard and John McKinney inquired of Scott Koehler, forester and, in essence, manager of the Greenville mill, about the disposition of the log deck. Koehler explained that the logs were to be transferred elsewhere and stated that the work was to be performed by a subcontractor, Don Howard Logging, Inc. Neither Heard nor McKinney made any immediate claim for the work in question, and these two employees, who apparently were the last of Respondent's employees to be released, were laid off on or about October 31 and November 2, 1979, respectively.

The aforementioned work by Don Howard Logging, Inc., commenced on November 7, 1979, on which date two employees of the subcontractor each worked 3 hours. Thereafter, the work apparently was discontinued until early January 1980, and from that date until about March 11, 1980, about 35 percent of the log deck was removed by the subcontractor's two employees. One of these employees, Jim North, performed some 220 hours of work at Respondent's premises during this approximately 10-week period of time. North testified that using Respondent's log handling equipment; namely, the CAT 966,[2] he spent about 70 percent of his time packing or hauling the logs from the log deck and transporting them to a loading area, and about 30 percent of the time loading the logs onto the subcontractor's trucks. Thus, North would pack the logs to the loading area with the CAT 966, and place them in three separate piles, according to species and/or length, which were accessible to the knuckle-boom loader, a less mobile type of log loading equipment which was operated by another employee of the subcontractor.[3] The knuckle-boom loader operator would then place the logs on the trucks. To a limited extent, North, using the CAT 966, would also load trucks from the piles of logs he had packed from the deck to the loading area. However, most of North's truck-loading work involved packing from the log deck and loading directly onto the truck, without first placing the logs in any of the piles in the loading area.

The record shows that since 1974, on an average of about four occasions each year, Respondent hired subcontractors, including Don Howard Logging, Inc., to load and/or transport logs from its Greenville mill to other locations. On these occasions, if Respondent had employees capable of loading logs onto trucks with Respondent's equipment, these employees would be utilized to load logs, and the subcontractor's employees would merely drive the trucks. However, there were frequently no such employees with the necessary experience,[4] and from 30 to 50 percent of the time employees of the subcontractor would both load and haul the logs. In the latter event, employees of the subcontractor used a CAT 966, owned by the subcontractor, to load the logs directly from the log deck (until about 1977, when the subcontractor's knuckle-boom loader was thereafter primarily used to do this work) and the only assistance by Respondent's employees would involve the infrequent movement of logs to a more convenient place, or to clean up the area after or during the loading operation.

Koehler testified that, when he contracted with Don Howard Logging, Inc., in October 1979, he anticipated that the CAT 966 would be used, at the maximum, several hours a day a few days a week to remove bark and broken ends and transport some few logs to the knuckle-boom loader. Prior to this time, Koehler had discussed the possibility of using Respondent's employees for the CAT 966 work with an official at Respondent's division headquarters, but upon assuring themselves that Respondent had no employees who were qualified to load logs, and that the cleanup work would only amount to about 4 hours' work per week, Respondent did not think this idea was feasible. Koehler later learned, however, after the work had been subcontracted, that the Oroville sawmill initially required a different species of logs from those that were immediately available to the knuckle-boom loader. These particular logs had to be carried by the CAT 966 to an available place for loading by the knuckle-boom loader, thus necessitating the use of the CAT 966 to a much greater extent than originally anticipated.

On January 7, 1980, upon observing the aforementioned work, the Union's assistant business representative, Joe Palazzi, requested and received the November 12, 1979, letter of subcontract from Respondent. On January 9, grievances were filed over the work in question by Respondent's two log deck employees who had been laid off, and Business Representative Dunkley phoned Manager John Marty, asked why the Company was removing the logs with nonbargaining unit personnel, and claimed the work for unit employees. Marty replied that the claimed work of operating the CAT 966 was of short duration and would necessitate work of perhaps no more than a few hours per day.

Thereafter, a grievance meeting was held on January 17, 1980. Various union and management representatives

[1] The logs were stored in a log deck which consists of rows of logs stacked in a manner that facilitates further handling by various types of log handling equipment.

[2] The subcontractor leased this piece of machinery from Respondent at an hourly rate.

[3] Sometimes, in the absence of the knuckle-boom operator, North would operate the knuckle-boom loader.

[4] The correct loading of logs onto trucks necessitates a degree of expertise and experience in order to maintain the proper balance, apparently in order to prevent the logs from shifting during transport.

were present. A full discussion of the grievance was held and each party presented their respective positions. Respondent remained adamant that, under the circumstances, the work could be legitimately subcontracted.

The work of removing the log deck was subsequently discontinued on or about March 11, 1980, and sometime thereafter, in early April 1980, Respondent advised the Union that it had determined that the Greenville mill would be reopened for the purpose of a different type of production operation. As a result, the unit employees have been recalled to work.

C. *Analysis and Conclusions*

The contracting out of bargaining unit work is a statutory subject of collective bargaining, and an employer who unilaterally subcontracts such work without having afforded the employees' bargaining representative an opportunity to discuss the matter violates Section 8(a)(1) and (5) of the Act. *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203 (1964).

However, the Board in *Westinghouse Electric Corporation (Mansfield Plant)*, 150 NLRB 1574 (1965), has enumerated certain criteria which should be considered in determining whether an employer may be justified in unilaterally subcontracting work. These factors are as follows: (1) whether the subcontract was motivated solely by economic consideration; (2) whether the subcontract comported with traditional methods by which the employer conducted its business operations; (3) whether the subcontract did not vary significantly in kind or degree from what had been customary under established past practice; (4) whether the subcontract had no demonstrable adverse impact on employees in the unit; and (5) whether the union had an opportunity to bargain about changes in existing subcontracting practices at general negotiating meetings.

The General Counsel does not appear to maintain that any of Respondent's laid-off employees had the skill and experience to load trucks. Rather, it is contended that the work of undecking the logs and placing them in piles, preparatory to their being loaded by the subcontractor's employees, is work about which Respondent was obligated to bargain.

The record shows that employees of Respondent had performed the work of undecking logs and loading the trucks of subcontractors to the extent that Respondent had qualified employees to perform this work. When such employees were unavailable, which appears to have been about 50 percent of the time, Respondent subcontracted the work. However, when the loading work was subcontracted, Respondent's employees did not, as a part of the loading operation, undeck the logs and deposit them in a place accessible to the subcontractor's employees for subsequent loading except, as the record shows, in very isolated instances. Thus, I find, that there was no historical frequency sufficient to be characterized as a "practice" of utilizing a composite crew for the undecking and loading of logs.

Due to the fact that Respondent received instructions to supply various mills with particular species of logs on a priority basis, a decision learned of subsequent to the entering into of the subcontract, the subcontractor's employees found it necessary to obtain logs from the log deck which could not be reached by the knuckle-boom loader, a piece of equipment that was not as mobile as the CAT 966. Thus, the CAT 966 was utilized to bring the logs to within reach of the knuckle-boom loader, and also to load logs about 30 percent of the time. Respondent had not previously contemplated this. There is no evidence that had the work in question continued after March 11, 1980, the CAT 966 would have been utilized to the same extent for packing, as distinguished from loading, work.

Applying the aforementioned criteria enunciated in *Westinghouse Electric Corporation, supra*, to the instant facts, I find that, on balance, the contracting out of work herein was not violative of the Act, as alleged. Thus, it is clear that the subcontract was motivated solely by economic considerations, and there is no contention to the contrary; the subcontract, as initially conceived, comported with the manner in which Respondent had previously contracted out its log loading work, and there had never been a composite crew, comprised of employees of Respondent and the subcontractor, to perform component parts of such work; the subcontract was clearly of a nonrecurrent nature entered into for the purpose of implementing Respondent's decision to permanently close its Greenville mill, and as such, particularly considering the limited number of hours per day that an employee of Respondent would be needed to undeck logs, would not appear to have a sufficiently adverse current or future impact upon unit employees;[5] and the record clearly shows that the parties have had an opportunity to bargain, and that in prior contract negotiations the Union has proposed a clause prohibiting subcontracting of any nature, but that the changes proposed by the Union have not been accepted by Respondent[6] and, as a result, subcontracting has routinely occurred.

Based on the foregoing considerations, I conclude that Respondent's determination to subcontract the work in question without affording the Union[7] advance notice or an opportunity to bargain, and its subsequent decision to deny the Union's claim for a portion of the work, was not violative of Section 8(a)(5) and (1) of the Act, and I shall dismiss the complaint in its entirety. See *General Electric Company, supra.*

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

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[5] See *General Electric Company*, 240 NLRB 703, 708 (1979); also see *Allied Chemical Corporation (National Aniline Division)*, 151 NLRB 718, 721 (1965), wherein the Board states that the detriment to unit employees must be "significant."

[6] However, contrary to Respondent's contention, I do not find that as a result of bargaining over such contract proposals the Union waived its right to object to unilateral subcontracting. See *Equitable Gas Company*, 245 NLRB 260, 263 (1979).

[7] Whether, under the circumstances, it may be fairly concluded that bargaining over the work did in fact occur on and subsequent to January 7, 1980, during the course of the grievance discussions at a time when the work was in its beginning stages, is an issue not raised by the parties herein.

3. Respondent has not violated the Act as alleged.

Accordingly, upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[8]

The complaint is dismissed in its entirety.

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.